

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1162 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DIVISIONAL CONTROLLER

Versus

G M GALOLIA

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Appearance:

MR HARDIK RAVAL for Petitioner

MR HK RATHOD for Respondent

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 18/01/99

ORAL JUDGEMENT

Through this Special Civil Application, the Gujarat State Road Transport Corporation has challenged the order dated 3rd April 1991 passed by the Industrial Tribunal, Rajkot, in Reference ITR No.44 of 1988 whereby the punishment given to the respondent workman has been reduced to the stoppage of one annual increment without cumulative effect from that of putting him to the minimum of the time scale.

2. The only question to be considered in this Special Civil Application is about the quantum of

punishment. The concerned workman was working as a Conductor with the Corporation. On 18th October 1982 while the workman was performing his duties as a Conductor in the Corporation's Bus No.GTR 8315, one of the passengers namely, Shri Mahendra P. Pandya who was also a Civil Judge, had paid the fare on and from Liliya to Amreli and had demanded ticket for the same. However, the workman, instead of giving him the ticket against the fare paid for the distance from Liliya to Amreli, gave him a ticket from Gothavadar to Amreli, that too, after the same was demanded two to three times. Not only that, the concerned workman also misbehaved with the aforesaid passenger. Shri Mahendra P.Pandya, the passenger as aforesaid filed a complaint on the very same day, i.e. 18th October 1982 before the Senior Depot Manager, Amreli and on that basis, an inquiry was held against the workman. In this inquiry, the charges have been found to be proved. The workman was visited with the punishment of dismissal from service by the order dated 24th January 1983. Against this dismissal order dated 24th January 1983, the workman preferred a departmental appeal. In the departmental appeal, the Corporation set aside the order of dismissal and by an order dated 9th January 1984, the appellate authority imposed the punishment of placing the workman at the minimum of the pay scale of the Conductor. Against this order dated 9th January 1984, the workman raised an industrial dispute and on reference being made, the Reference ITR No.44 of 1988 has been decided by the Industrial Tribunal, Rajkot, on 3rd April 1991.

3. Mr.Hardik Raval appearing on behalf of the Corporation has assailed this order dated 3rd April 1991 passed by the Industrial Tribunal, Rajkot, on the ground that the Industrial Tribunal has taken an unduly lenient view. According to Mr.Raval, the Corporation had already reduced the punishment from dismissal to that of placing the workman at the minimum of the pay scale and there was no scope for further reduction of the punishment, looking to the gravity of the misconduct.

4. Mr.H.K.Rathod appearing on behalf of the respondent workman has submitted that the workman had already served the Corporation for a period of over ten years upto 1983 when he was subjected to the punishment as aforesaid and has further referred to the circumstances mentioned in para 5 of the order passed by the Industrial Tribunal for the purpose of reducing the punishment. The Industrial Tribunal has considered the misconduct of the workman to be not of that serious nature and has also found that the punishment of placing

the petitioner at the minimum of the pay scale after ten years of service was highly excessive and he has also referred to the past record of the concerned workman in which there is no major punishment. Mr. Rathod has submitted that the workman had already suffered the loss of pay from the date of his dismissal, i.e. 24th January 1983 upto 9th January 1984, i.e. for a period of one year. He has also submitted that if at all the Court finds that the punishment of stoppage of one annual increment without cumulative effect is inadequate, the punishment may be enhanced even upto withholding of three annual increments, but in case the punishment of placing the respondent workman at the minimum of the pay scale is maintained, the workman would virtually lose the benefits of the entire service period rendered by him prior to 1983 and that will have far reaching implications to his prejudice not only in the emoluments during the service period but also on his retiral benefits.

5. Whereas the challenge is required to be considered only with regard to the quantum and this Court finds that the basic grievance was with regard to the issue of the ticket from Gothavadar to Amreli instead of Liliya to Amreli and that makes a difference of about 25 ps. only as is the common case of both the sides. In such cases, the possibility of some communication gap cannot be ruled out and the Industrial Tribunal itself has noted that, had the concerned workman given the ticket, in time when he boarded the Bus, and would not have waited till the Bus reached Gothavadar, such a situation would not have arisen and in such circumstances, even if it is found that the concerned workman had given the ticket after the same was demanded for two to three times, and that too, for a shorter distance for a gain of 25 ps. way back in 1982, looking to the fact that there is nothing serious against the respondent workman in his past record and the Industrial Tribunal itself has reduced the punishment by invoking Section 11-A of the Industrial Disputes Act and whereas on behalf of the concerned workman also it has been stated that in the facts and circumstances of the case, the stoppage of three increments without cumulative effect would be sufficient and that the workman is ready to accept the punishment of stoppage of three increments without cumulative effect; this Court also finds that it would meet the ends of justice in case the punishment of stoppage of one increment without cumulative effect as reduced by the Industrial Tribunal, Rajkot be modified in favour of the Corporation and against the workman so as to make the effective punishment to be stoppage of three annual increments without cumulative effect.

Mr.H.K.Rathod, learned Counsel for the respondent workman undertakes on behalf of the workman that he voluntarily accepts the punishment of stoppage of three increments without cumulative effect and that he would not challenge the same and would also not claim the interest in terms of the order dated 21.2.1992 passed by this Court while issuing the Rule.

6. Accordingly, the order dated 3rd April 1991 passed by the Industrial Tribunal, Rajkot in Reference ITR No. 44 of 1988 is modified in terms that the Corporation may pass appropriate orders withholding three annual increments of the respondent workman without cumulative effect from the relevant date instead of placing him at the minimum of the pay scale subject to the condition that no interest shall be payable to the respondent workman in terms of the order dated 21.2.1992 passed by this Court while issuing the Rule. This Special Civil Application is accordingly allowed in part as above and the Rule is made absolute in terms as aforesaid. No order as to costs.

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